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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 JAMES EUSSE, JR.,

12 Plaintiff,

13 vs.

14 MARCO VITELA, et al.,

15 Defendants.

CASE NO. 13cv916 BEN (NLS)

**ORDER ADOPTING  
REPORT AND  
RECOMMENDATION**

[Docket Nos. 18, 21, 23]

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17 On February 28, 2014, Defendants E. Duarte, M. Carpio, R. Nelson, G. Janda,  
18 M. Whitman, and M. Vitela filed a motion to dismiss portions of Plaintiff James Eusse,  
19 Jr.'s First Amended Complaint. (Docket No. 18.) On April 28, 2014, Plaintiff filed a  
20 motion for leave to file a second amended complaint. (Docket No. 21.) On June 10,  
21 2014, Magistrate Judge Nita L. Stormes issued a Report and Recommendation  
22 recommending the Court grant Plaintiff James Eusse, Jr.'s motion for leave to file a  
23 second amended complaint and deny Defendants' motion to dismiss as moot. (Docket  
24 No. 23.) Any objections to the Report and Recommendation were due June 24, 2014.  
25 (*Id.*) Neither party has filed any objections. For the reasons that follow, the Report and  
26 Recommendation is **ADOPTED**.

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1 A district judge “may accept, reject, or modify the recommended disposition” of  
2 a magistrate judge on a dispositive matter. FED. R. CIV. P. 72(b)(3); *see also* 28 U.S.C.  
3 § 636(b)(1). “The district judge must determine de novo any part of the [report and  
4 recommendation] that has been properly objected to.” FED. R. CIV. P. 72(b)(3).  
5 However, “[t]he statute makes it clear that the district judge must review the magistrate  
6 judge’s findings and recommendations de novo *if objection is made*, but not  
7 otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en  
8 banc) (emphasis in original); *see also Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th  
9 Cir. 2005). “Neither the Constitution nor the statute requires a district judge to review,  
10 de novo, findings and recommendations that the parties themselves accept as correct.”  
11 *Reyna-Tapia*, 328 F.3d at 1121.

12 In the absence of any objections, the Court fully **ADOPTS** Judge Stormes’  
13 Report and Recommendation. Plaintiff’s motion for leave to file a second amended  
14 complaint is **GRANTED**, and Defendants’ motion to dismiss is **DENIED** as moot.

15 Plaintiff shall file his second amended complaint on or before **July 25, 2014**.

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17 **IT IS SO ORDERED.**

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19 DATED: June 25, 2014

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21 HON. ROGER T. BENITEZ  
22 United States District Judge  
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